Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANSGAR BEHLER, BERND WAHLE,
LUDWIG BOENNIGER, YVONNE REICHERT and ALMUD FOLGE

Appeal No.. 2002-0772
Application No. 09/463,675

ON BRIEF

Before KIMLIN, PAK and MOORE, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 15-22.

Claim 15 is illustrative:

15. A composition for softening paper and textile substrates comprising:

(a) a nonionic component selected from the group consisting of a monoester of glycerol and a C_{8-22} fatty acid, a diester of glycerol and a C_{8-22} fatty acid, and mixtures thereof:

(b) a polyol component;

(c) a cationic emulsifier;

(d) a nonionic emulsifier; and

(e) water, and wherein the nonionic component and polyol component are present in the composition in a ratio by weight of from 2.5:1 to 1:2.5.

The examiner relies upon the following references as evidence of obviousness:

Severns et al. (Severns)	5,531,910	Jul. 2, 1996
Weinelt et al. (Weinelt)	5,880,086	Mar. 9, 1999

Appellants' claimed invention is directed to a softening composition for paper and textile substrates. The composition comprises, inter alia, a polyol component and a nonionic emulsifier in amounts within the recited ratio of 2.5:1 to 1:2.5.

Appealed claims 15-20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Weinelt. Claims 21 and 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Weinelt in view of Severns.

Appellants submit at page 2 of the principal brief that "[t]he claims stand and fall together." Accordingly, inasmuch as appellants have not set forth a separate substantive argument for separately rejected dependent claims 21 and 22, all the appealed claims stand or fall together with claim 15, and we will limit our consideration of this appeal to the examiner's rejection of claim 15.

We have thoroughly reviewed appellants' arguments for patentability advanced in the principal and reply briefs on appeal. We are in complete agreement, however, with the examiner's reasoned analysis and application of the prior art, as well as his cogent disposition of the arguments raised by appellants. As a result, we will sustain the examiner's rejections for the reasons set forth in the Answer, which we incorporate herein, and we add the following for emphasis only.

Appellants do not dispute the examiner's factual determination that Weinelt, like appellants, discloses a softening composition for textiles comprising each of the presently claimed components, i.e., (a) a nonionic component, (b) a polyol component, (c) a cationic emulsifier, (d) a nonionic emulsifier and (e) water. Also, appellants do not take issue with the examiner's finding that Weinelt discloses a preference for the polyol component and nonionic emulsifier being present in amounts which fall within the claimed ratios. Indeed, the referenced disclosure of amounts corresponding to both the lower and upper limits for the nonionic and polyol components fall directly within the claimed range (see column 1, lines 56-60). Consequently, based on Weinelt's explicit disclosure, we have no doubt that it would have been prima facie obvious for one of

ordinary skill in the art to formulate a softening composition for textiles that falls within the scope of appealed claim 15. In re Malagari, 499 F.2d 1297, 1303, 182 USPQ 549, 553 (CCPA 1974).

While the examiner cites Examples 4 and 5 of Weinelt as evidence that the referenced compositions are low viscosity, the thrust of appellants' argument is that since the referenced examples do not include the polyol and nonionic components in the claimed ratios, there would have been no motivation for one of ordinary skill in the art to modify the exemplified compositions in accordance with the claimed ratios. We find, however, that this argument is totally without merit. We fully concur with the examiner that insofar as Weinelt teaches a preference for the polyol and nonionic components to be present in amounts that are encompassed by the claimed ratios, there would have been ample motivation for one of ordinary skill in the art to make softening compositions that are embraced by claim 15. It is well settled that the consideration of a reference is not limited to its examples but all that it fairly teaches, particularly, as here, its preferred embodiments. In the words of Weinelt, the exemplified compositions are "[s]ome laundry softeners according

to the invention" (column 5, line 50). Furthermore, we find the following analysis of the examiner to be persuasively sound:

> The ratio recited by appellant [sic, appellants] is sufficiently broad that combining these ingredients in *random* amounts within the preferred ranges would afford a better than even chance of making a composition which meets appellant's [sic, appellants'] ratio. Indeed, a combination at the low end of the preferred ranges, 0.5% of each, meets the recited ratio; as does the combination at the middle, 2.75% of nonionic and 5.25% of glycol; as does a combination at the high end, 5% of nonionic and 10% of glycol. This amounts to a high expectation of success [page 6 of Answer, first paragraph].

Appellants submit at page 2 of the Reply Brief that "logic would dictate that those of ordinary skill in the art would have no reason to employ the claimed ratio by weight based on this reference clear **teaching away** therefrom, i.e., the ratio by weight disclosed in examples 4 and 5 is sufficient to achieve a low-viscosity emulsion" (second paragraph). We are convinced, however, that the reasonable inference to be drawn from the Weinelt disclosure is that all of the preferred ratios disclosed in the reference would yield a softening composition having a suitable low viscosity.

Appellants' principal brief presents no argument based upon objective evidence of nonobviousness, such as unexpected results. In the Reply Brief, however, a statement is made that appellants' specification data demonstrates "unexpected and superior results

obtained through the use of the claimed ratio by weight" (page 3, first paragraph). Appellants, however, have not addressed the examiner's criticism that the specification data does not "demonstrate unexpected results commensurate in scope with the claims because data for the elected nonionic emulsifier are not presented" (page 5 of Answer, last sentence). Moreover, appellants have not shouldered their burden of providing an objective comparison with the closest prior art and establishing that the specification data would be considered truly unexpected by one of ordinary skill in the art, particularly in light of the Weinelt disclosure. In re Merck & Co., 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986); In re Klosak, 455 F.2d 1077, 1080, 173 USPQ 14, 16 (CCPA 1972).

As noted above, appellants have not presented an argument for separately rejected dependent claims 21 and 22 that differs in any respect from the argument directed to the rejection of claim 15.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

EDWARD C. KIMLIN
Administrative Patent Judge

CHUNG K. PAK
Administrative Patent Judge

JAMES T. MOORE
Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

ECK:clm

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